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ABSTRACT

This monograph attempts to familiarize people with their constitutional rights through the use of a playlet presented as a conversation among three people. The conversation points out that many rights stand in conflict with one another and how a balancing act must be achieved to carry out the enjoyment of one's rights. The monograph proceeds on the basis that an appreciation of the obligations that accompany the rights is the key to the balancing act in exercising rights. The paper concludes that in order to enjoy rights fully, it is necessary to promote a culture where citizens respect the rights of others almost naturally. (EH)

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LET US TALK ABOUT OUR RIGHTS

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MANDLA SELEOANE

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Mandla Seleoane

HSRC Publishers
Pretoria
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FOREWORD

LET US TALK ABOUT OUR RIGHTS is meant to familiarise people with their constitutional rights. It assumes that its readers will have a matric level understanding of the Constitution - or the Bill of Rights.

Three characters - Tshepo, Vusi and Nomsa - are used in order to give life to the exposition. The explanation is therefore as organic as one can have it. **LET US TALK ABOUT OUR RIGHTS** is not simply a list of the rights we have under the Constitution: there is a lively debate among the characters about many of these rights. The discussion tries to bring out the conflict which arises in real life situations when we exercise our rights.

Many of these rights stand in conflict with one another. The monograph tries to capture all these conflicts and the many balancing acts which we are called upon to carry out daily in the enjoyment of our rights. The monograph proceeds on the basis that an appreciation of the obligations which go with our rights is the key to these many balancing acts that we have to embark upon in exercising our constitutional rights. In order for us to enjoy our rights fully, the monograph concludes, it is necessary to promote a culture where citizens respect the rights of others almost naturally.

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3. Lambert Moraloki for the remarkable and imaginative illustrations, without which the monograph might be completely boring and lifeless.
4. Tim Steward, without whose editorial skills the document might be very clumsy. I take responsibility for any clumsiness — linguistic or otherwise — which might still be present in the document.

Mandla Seleoane
October 1996

LET US TALK ABOUT OUR RIGHTS

Tshepo: You know, Nomsa, this whole thing about human rights is confusing. I have tried to read the new Constitution, but it is rather long and difficult to follow. Have you had time to read the Constitution?

Vusi: I agree with Tshepo. But I think we should also check where this whole talk about human rights comes from. I am a little worried that we are just buying into Western ideas which may have no relevance at all to our situation.

Nomsa: Mh ..., it looks like we are in for a rather serious discussion here. Tshepo, would you agree that it would be better to start with the issue raised by Vusi? As I see it, simply from a logical point of view, it would be easier for us to discuss the rights mentioned in the Constitution if we have some broad agreement on the subject.

Tshepo: Yes, I agree. I do not expect that we shall spend too much time on that, for Vusi seems completely correct: we are obsessed with Western ideas.

Nomsa: Well, let us look at that. What do you guys say about the **African Charter on Human and Peoples' Rights**?

Tshepo: Give us a break, Nomsa. That document is as Western as our Constitution.

Vusi: I think Tshepo has a point, Nomsa. The **African Charter on Human and Peoples' Rights** is as much under the influence of Western thinking as our Constitution. One only has to look at other world documents on human rights, and the connection is clear. Would you not agree, Nomsa, that the Charter is based on the **Universal Declaration of Human Rights**, for instance?

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Nomsa: I'm afraid you guys have a point. What we have to do, then, is shift the inquiry a little back. We must inquire into our past - i.e. before we came into contact, as one might say, with Western influence. Are you guys saying that our people did not have any rights at the time?

Vusi: That is exactly what we are asking you, Nomsa. So please tell us.

Nomsa: Well, as I see it, we had rights long before we made contact with the West. Our ancestors recognized many rights which are included in the Constitution. Every member of the village had the right to life, and therefore if a fellow villager killed him or her, that constituted an offence. But the right to life, although not consciously formulated, had more meaning than the one we enjoy today in some respects. Studies of early societies (anthropology) show, for instance, that for as long as food was available in the warehouse of the King, none of his subjects was allowed to die of hunger. Indeed, some African idioms still reflect that kind of thinking in our age. We still say, Vusi, "ga go na lebitla la tlala", do we not? (Hunger does not kill.) This idiom, which we still use today, arises from the practice I have just referred to - namely, that in olden days nobody could die of hunger when food was available. The right to free speech was recognized by our ancestors long before we came into contact with the West. It was not as "all-encompassing" as our Constitution provides. At village meetings, for instance, all adult male persons had freedom to express themselves freely, and so influence "policy". Any study of our "court" systems shows that the right to speak was much broader than in any known judicial system. So long as you were the allowed age and, possibly, gender, you were allowed to speak on any matter that was before any "court". Indeed, our sense of free speech is illustrated to this day by the capacity in just about every African language to swear in ordinary conversation without raising any eyebrow. I think our sense of free speech is also illustrated by the African adage that "we must speak until we agree". If we put our minds to it, we could think of many other rights which our ancestors had. It accordingly seems to me, then, that the idea of rights is not foreign to African thought. True, they were not consciously formulated. But it would seem that they were the more forcefully respected for that. What we are doing, then, is expand and formulate the rights that we already know.

Vusi: Ja, that makes sense to me. What about you, Tshepo?

Tshepo: Yes to me too, and if it's fine with you guys, could we tackle the problem that I have raised about our Constitution?

Nomsa: Yes, Tshepo, I have read the Constitution. I agree with you that it is rather long, and that ordinary people like you and I cannot follow it too easily. What a pity they always give these important documents to lawyers to write! You know, in all my life I have never understood anything written by a lawyer at a first reading. For some reason they seem to enjoy saying and writing things in a way that they alone can understand.

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Vusi: That is true, you know. At times I get the feeling that they do this purposely, so that they will always have a job explaining these things to us - I mean, that is income for them. Imagine how rough life would be for them if we all understood the law; if they did not hide things, and all we had to do was read a law and understand exactly what is required of us!

Tshepo: Absolutely. Come to think of it, it seems that this is what Samora Machel had in mind when he tried to abolish the legal profession in Mozambique in 1975. So tell me how you got it right reading the Constitution. I am very keen to know what it says about our rights.

Nomsa: Seeing that we have already spoken so much about the legal profession, perhaps it might not be a bad idea to start our discussion from there? I think that the point you make about Samora Machel intending to abolish the legal profession is important. Do you really think, Tshepo, that it would be a good idea in South Africa to abolish the legal profession?

Tshepo: Look, Nomsa, we have been saying not so long ago that nobody really understands anything these guys say or write - except, of course, that one must hope they understand themselves. If the laws are written in a simple manner, so that we can all understand them, what would we still need lawyers for? Ordinary people would not need them. They will not need each other, because they too will understand the laws. So why not abolish the profession?

Nomsa: I agree with your argument that laws should be simplified. I actually think that, unless that is done, ordinary people cannot enjoy their rights fully. But you may find it interesting to know, Tshepo, that the Constitution would not allow the abolition of the legal profession or any profession, for that matter. The Constitution says that all people have the **freedom to engage in economic activity**. It also says that all people have the freedom to pursue a livelihood anywhere in South Africa. If we abolished the legal profession, we would be destroying the livelihood of lawyers. We would be saying that they do not have the freedom to engage in the economic activity that they have been trained in. Therefore we would be violating their constitutional right.

Tshepo: Mh ... why am I not surprised to hear this? So these guys have really taken care of themselves ...

Nomsa: No, Tshepo, that is not what I am saying. The Constitution protects everyone's right to pursue a livelihood, not only lawyers. Do you think that it is a bad thing to protect people's rights like this?

Tshepo: No, I think that it is a good thing. My problem is with lawyers ...

Nomsa: Ah ... let's talk about that. What you say, then, is that people's right to pursue a livelihood should be protected. But you would rather lawyers were excluded from this protection?

Tshepo: Yes. And what's wrong with that?

Vusi: But, Tshepo, even I can see that you are inconsistent there. I do not know the legal arguments, but I can see that you are inconsistent.

Nomsa: Well, I agree with Vusi, Tshepo. But let us try and look at the legal argument. There could be quite a number of things wrong with what you are saying, but we cannot discuss everything that is wrong with it. What we need to look at is whether the exclusion of lawyers from the protection would be correct under the Constitution. You see, if we excluded lawyers in the manner that you propose, we would be discriminating against them. The Constitution says that we cannot do that. It says that everyone is equal before the law. It says **we are all entitled to equal protection of the law**. And it says that it is wrong to discriminate against any human being.

Vusi: Yes, I remember seeing that. But I thought that it mentioned very specific things in respect of which discrimination is forbidden. It mentions things like race, gender, age, language, etc. I do not remember seeing anything about lawyers.

Tshepo: I would not be surprised, Vusi, if they have hidden that. It is, after all, their specialty to hide things.

Nomsa: Ja, well, I suppose that we could say that they hid it. This is the point where I agree with you about the need to simplify the laws. The words that you have just referred to, Vusi - i.e. race, gender, etc. - there is a phrase before

those words. It says "without derogating from the generality of this provision". That means the Constitution prohibits other forms of discrimination as well, even if they are not specifically mentioned. No one would really be able to state in advance all the forms that discrimination can take. Therefore the Constitution does not try to do that: it only lists examples, and it says that those examples are not the whole list. So I am afraid, Tshepo, we are not allowed to discriminate against anyone, including lawyers. Would you guys like us to talk about other rights?

Tshepo: Of course, yes. I have been wondering about the stupidity of the Constitution too. Certain things which it says are so obvious, I wonder why it mentions them at all. I actually think that this confirms my suspicion about lawyers - it is really only an idle person who could waste so much time, writing obvious things like the ones included in the Constitution.

Nomsa: Please tell us what exactly you are speaking about. For my part, and I don't know about you, Vusi, what you are saying is very interesting, Tshepo. A few moments ago you were saying that you were having a hell of a time trying to understand what the Constitution is saying. Now you say a lot of the things it says are so obvious, you don't know why they have to be said. That sounds like a contradiction to me, but I'm sure there's a valid point you wish to make.

Tshepo: Now you are trying to make me feel stupid, and I really resent that. If you are tired of the discussion, why don't we just call it quits while we are still friends?

Nomsa: Please forgive me if that is how I came across: that was not my intention. I would still like to hear what you have to say about the stupid provisions of the Constitution, however. But you know, there are two important points that I would like to discuss with you as a result of our present misunderstanding, and then we can look at your criticism of the Constitution afterwards. If it is okay with you, I would prefer that we start with the two points that I want to raise before we hear your criticism: I am just afraid I might forget. Is that acceptable to you?

Tshepo: Yes, Nomsa. After all, I have been thinking about the point I was making too long to forget it. So please go ahead.

Nomsa: You know, Tshepo, I would never want to make you appear stupid. But if I did have such an intention, do you realise that the Constitution protects you? The Constitution says that everyone should be treated with respect. It says that **the dignity of every person should be respected**. So, I would really be the last person to want to make you appear like a fool. But if I did, you have the protection of the Constitution.

Vusi: Wait a bit, Nomsa. What you are saying is very interesting. I once heard a lawyer speak about that. I seem to remember that he said the Constitution

has only vertical application. I did not understand what he meant by this. Can you explain that to me?

Nomsa: Mh .... What your lawyer friend meant is that rights which are mentioned in the Constitution apply as between organs of state and the citizens. They also bind the various departments and levels of government in their dealings with one another. This means that if the Constitution says you have the right to be treated with respect, the State is bound to respect that right. It means you can force the State to treat you with respect, but you cannot force other citizens to treat you with respect ...

Tshepo: You see now, this is exactly what I hate with the law. Most of the people I meet do not represent the State. Frankly, I have very little interaction with state organs. Therefore the people who are most likely to treat me with disrespect are the other citizens, not the State. So what use is it to me if I cannot compel these people to treat me with respect? What use is it to me to have the right to be treated with respect if I cannot compel the people who are most likely to treat me with disrespect to obey my right?

Nomsa: The questions you are asking are very difficult: perhaps that is why lawyers simply throw big words at you. It helps, you know, because the less you understand what I am saying, the less difficult questions you will ask me. Firstly, Tshepo, it is important that the State should be prevented by the Constitution from violating our rights. And here I must emphasize that I have in mind not only our right to be treated with respect: I have in mind our other rights as well - those we have already spoken about, and others which, I hope, we might still speak about in this discussion. You see, because the State is so powerful, it would be very easy for it to literally walk all over you. You would not have any way of protecting yourself. Often people do not realise how serious this problem might be, until something very bad actually happens. So, if you do not mind, I would ask you to accept that this

is very important, but that when we finish our discussion, and we have looked at other rights, we come back to this question.

With reference to the other matter which you have raised, we can note that our Constitution says that the Bill of Rights binds not only organs of the State, but individuals too. Of course the Bill of Rights does not bind individuals in the same way as it binds organs of the State. The Constitution says, for example, that in inquiring whether a right is binding on other individuals, we have to take into consideration the nature of that right and the duty which it imposes. So, for example, the fact that you have the right to free speech must be considered against the fact that other people have rights too - such as the right to dignity and to privacy. The nature of the right to free speech is such that it can be used very easily to infringe on the rights of others. In inquiring, therefore, whether I am bound to respect your right to free speech in any given situation, it has to be investigated what your right would do to me in the specific situation we are considering. In a sense this is also how the right is limited by the Constitution: the Constitution does not protect free speech if it amounts to incitement to commit violence or to advocating hatred based on race, ethnicity, religion or gender. In such a case not even the State is bound to respect your right to free speech. So, where I defame you, for example, you do not have to bear with my right to free speech. If you take the right not to be subjected to slavery, however, the matter is more straight-forward. Neither the State nor the individual can advance any good reason for violating that right. I said that there are two points that I wished to make: do you think we could proceed to the next one?

Tshepo: Certainly, Nomsa. Please go ahead.

Vusi: I am sorry, Tshepo, there is another point I would like to raise for the sake of interest before Nomsa goes to the other issue. That is if it is fine with you, Nomsa. I am mindful that you said you are afraid because you might forget your point - which is not to say I believed you.

Nomsa: What do you say about this, Tshepo? Are you going to protect me from being ridiculed by Vusi? Never mind. By all means do raise your point, Vusi.

Vusi: I just thought that this might be the point at which to raise the question about grouping rights into generations, because I thought that that also has to do with the enforcement of rights. Which sort of rights are enforceable, Nomsa?

Nomsa: Ja, Vusi, that is really a tall order. People speak generally about first, second, and third-generation rights. Of these, the dominant opinion is that only first-generation rights are enforceable. If it is okay with you guys, can I proceed to the other point that I referred to earlier?

Vusi: Yes, please do, Nomsa.

Nomsa: Great. Well, I said that the Constitution protects you from being treated disrespectfully. So it is wrong for anyone to ridicule you. I also said that I did not have the intention to humiliate you, Tshepo. However I was pleasantly surprised at the almost violent way in which you reacted to what I said.

Tshepo: What do you mean? How would you have expected me to react? You say yourself that no one has the right to ridicule me, but you expect me to smile when you humiliate me?

Nomsa: But, Tshepo, I have the right to say what I think: the Constitution says so. Therefore don't you think that you were threatening my **right to freedom of speech** when you reacted to what I said in the manner that you did?

Vusi: Now I find this whole thing confusing. First you say that it is Tshepo's right not to be humiliated. Now you say you have the right to say what you think - even, I suppose, if what you are saying humiliates him. So what point is there in anyone having the right not to be humiliated if you also have the right to humiliate them?

Nomsa: That can be quite a problem. However that is how it is with all our rights. Let us take **freedom of movement** as an example. The Constitution says we all have the right to move freely anywhere in South Africa. There might be very serious problems if we exercised this right carelessly. If I move, say from point A to point B, and you are holding a conversation with Vusi somewhere between point A and point B, the result might be that you are obstructing my path. I could, if I am strong enough, walk over you or push you out of the way. If you asked me why I did that, I would say: because you are interfering with my **right to move about freely**. But then, if I did that, I would also be interfering with your **right to freedom of assembly**, which the Constitution grants you.

There is another example to illustrate this, if you think it is necessary.

Tshepo: I would like to hear that, Nomsa. But I hope that we can come back to this example of yours about movement, for I think that you are simplifying too much. But for now, please let us hear your other example.

Nomsa: Very well, I would also like to hear why you think that I am simplifying too much. But the other example I mentioned ... it has to do with residence. The Constitution says that we have the right to freely choose our place of residence anywhere in South Africa. I cannot, however, move into your house and take it over on the basis that I am exercising my constitutional right to choose a place of residence, and your house is the place that I have chosen. If I did that, I would be violating your **right to privacy**. I would also be violating your **right to freedom and security**.

Now, then, I would like to try and connect these things I've been saying, before you tell me why you think that I am oversimplifying. As you will remember, the problem Vusi raised is that your **right to dignity** is meaningless if I am also allowed to say things which humiliate you. My purpose, in saying all the things I've been saying, is to suggest that we have a number of rights which clash. When we exercise our rights, we also have to take into account the rights of others. When, therefore, I exercise my **right to free speech**, I must do that in a manner which does not reduce your **right to dignity**. When I exercise my **right to free movement**, I should take into account that other people also have the right to move about freely. I must take into account that other people have the **right to assemble**. Therefore I cannot bump people out of the road just because they happen to

be weaker than I am. When I want a place to stay, I cannot move into the nearest house that I come across and like. So, then, **we can really all enjoy our rights only if we are prepared to respect the rights which other people have**. In other words, there must be mutual tolerance for one another's rights, otherwise all our rights will soon become meaningless. As I said earlier, any human rights order presupposes that there is an almost natural willingness among the citizens to respect one another's rights. Do you now wish to tell me why you think I am simplifying, Tshepo?

Tshepo: I now have a consideration which has overtaken my concern with your simplification. If there is time to talk about my previous concern at a later stage, we can do that. But for now there is a more pressing question I have in mind. It is one thing to have rights which clash. It is a completely different thing to have rights which are not reconcilable at all. If, as you say, I have the right not to be humiliated and, again as you say, you have the right to say what you think, even if it humiliates me, then we are having a very serious problem. Then it seems we are not dealing merely with rights which

clash: these two rights seem completely irreconcilable. I can simply not exercise my right not to be humiliated - by you - without necessarily removing your right to humiliate me - with your free speech. Imagine a die-hard racist who has the right to say what he thinks. Imagine all the things he might call me. I am sorry Nomsa, but I do not see how the gap between his right to insult me and my right not to be insulted can ever be bridged. My right and his cannot survive together. If one stands, the other must fall. I do not see a middle course.

Nomsa: Tshepo, I really wish that I had an answer for that problem. The Constitution, however, is aware of the problem that you are speaking about. It says that laws may be passed which limit the rights mentioned in the Constitution. So it would be possible to pass a law, for example, which limits people's free speech. The law might say, for example, that no one has the right to insult people of another race group, religion, sex, etc. But then the Constitution also says that such a limitation must be reasonable, justifiable ...

Vusi: And who decides that, Nomsa? Who decides that any limitation is reasonable, or justifiable? And how is that decision taken - I mean, what do they take into account?

Nomsa: I think that we should possibly start with your last question - i.e. what should be taken into account in deciding whether to pass a law which limits any of the rights mentioned in the Constitution. The Constitution itself says that we should look at a democratic society. It says we should look at an open society. And it says we should look at a society which is based on equality. When, therefore, we wish to limit any of the rights mentioned in the Constitution, we have to make sure that the limitation does not make us undemocratic; that it does not introduce inequality; and that it is possible to introduce the limitation, and still remain an open society. In all fairness, Vusi, I think that our Constitution shows some weakness here. It does not tell us what a democratic society is. Apart from telling us that we are all equal before the law, it does not tell us what a society based on equality is. It does not tell us what an open society is. When, therefore, we have to decide whether the limitation we wish to introduce is allowed by the Constitution, we would really be groping in the dark. We might look at other countries which we consider democratic, open societies, and to be based on equality. We can learn some lessons from them, but we would have a problem: these countries do not have a uniform way of dealing with this problem. Some democratic countries limit these rights more readily than others. And then some democratic countries may not even have written constitutions or a bill of rights. So, deciding whether the limitation we wish to place on some of these rights is consistent with an open and democratic society which is based on equality, may be quite difficult: we might never find a model, and yet that is what the Constitution seems to say we should do.

CONSTITUTIONAL COURT

Your second question is somewhat easier. If there is a difference of opinion about the meaning, content or extent of any of the rights stated in the Constitution, the matter can be referred to the Constitutional Court. The decision of the Constitutional Court is final, and we would have to live with it, whether we like it or not ...

Tshepo: Would that not lead to some form of dictatorship? If the Constitutional Court makes decisions which we do not like, and we have no escape from such decisions, that does not sound right.

Nomsa: We do have an escape. The Constitutional Court decides cases on the basis of the law as it stands. If it is true that a majority of the citizens of South Africa are unhappy with the decision of the Constitutional Court, they can put pressure on the government to change the law. You see, this is really the wonderful thing about democracy. In fact I think that this is one of the most important rights we have: to decide what laws are going to govern us. But in order to make sure that we do not have a majority oppressing minorities, the Constitution requires that a certain minimum number of votes must be obtained in parliament before the Constitution can be amended. The Constitution cannot be amended by a simple majority. If, therefore, we are unhappy with the Constitutional Court's decision on a point of law, we can agitate that that part of the Constitution should be amended, so that it reflects our wishes. But we would need to ensure that two-thirds of the members of parliament that we have elected, vote for such a change. Therefore, Tshepo, it is unlikely that we might have a dictatorship of the Constitutional Court. On the whole, however, I am sure that you would agree that it is necessary to have the Constitutional Court, for it would be confusing if we were all at liberty to interpret the Constitution as we please.

Vusi: Ja, I can certainly see that, I don't know about you, Tshepo. But then, Nomsa, judges may be quite conservative. I think it would be silly to suppose that all the judges of the Constitutional Court will always be happy with protecting our rights. If they have so much power in deciding the content and the extent of our rights, is there no risk that the Court might at some stage begin to interpret the Constitution in such a way that they reduce our rights?

Nomsa: The risk is always there, Vusi, but we need a little bit of optimism too, or don't we? In any case, a conservative parliament might also begin to amend the Constitution in such a way that they reduce our rights. So what shall we say - open the door to chaos and allow everyone to define the scope and content of his rights? The **Interim Constitution** provided that, in limiting a right, care has to be taken that the limitation does not amount to a denial of the essence of the right in question. The permanent Constitution does not have this provision. The requirement, however, that a limitation of a right should not amount to a denial of the right was endorsed in the case of **State v Makwanyane and Mchunu**. Now, of course, it may be argued that the Constitution has changed since and that, therefore, this requirement is no

longer part of our law. I cannot see, however, that the courts, and particularly the Constitutional Court, would allow that rights should be limited in such a drastic manner that their essential content is denied. So, then, if we take the **right of free speech** as an example, the law may limit this. It might say, for example, that you are free to say anything about me, but that you are not free to tell lies about me. So, if you publish an article in the newspaper, and you call me a thief, that might be accepted as a fair exercise of your freedom of speech, so long as what you are saying is true. Quite obviously, telling the nation that I am a thief might cause me a fair amount of embarrassment and inconvenience. But if you are telling the truth, I simply have to live with the embarrassment and inconvenience. If you are lying, however, then, in all fairness, I do not have to put up with the embarrassment and the inconvenience. So the law would in such a case allow me to sue you. If I should, in such a case, sue you, your constitutional right to speak your mind would not help you. So you see, you have the right to speak, but it is limited by the requirement that what you say about others should be true. I think that the Constitutional Court will also bear this in mind when it limits our rights - i.e. it will not limit them in such a way that it negates the essence of the right.

Vusi: Ah, that reminds me of something I once heard, that at times even if what you are saying is true, you may still be sued. I think they said something

about public interest ... it never really made sense to me. I mean, if something is true why can't I say it? Perhaps you can help me understand that.

Nomsa: Ja, Vusi, there is also such a limitation. I don't know if you will agree with me, but let's try this example. Imagine someone who attempts the matriculation examinations three times without any success. He then decides to abandon his studies completely. We might wish to run an article in the local newspaper about his failure. But what would the purpose of the article be? If we simply want the people to know this about him, then we might be making ourselves guilty of violating his **right of privacy**. Then, even though what we say about him is true, it might land us in some trouble.

But now let's say that our friend is a candidate for a public post where he will be in charge of the education of our children. Now we have not only the right to bring it to the attention of the public that our friend gave up his studies after failing the matric exams three times: we have also the duty to do so. The public has an interest in knowing this, because we have to decide whether the education of our children should be placed in the hands of a person who could not make it through matric after three attempts. The **right of the public to know**, now becomes more important than our friend's right to privacy, and he cannot complain about the embarrassment and inconvenience our truth is causing him. One can almost say that he waived his right to privacy by applying or running for the public post.

I must emphasize, though, that some of the rules of the law dealing with these matters might some day be modified by the rulings of the Constitutional Court. One can imagine, for instance, that newspapers might want less and less restrictions to be placed on their ability to inform the public.

How do you feel about telling us of the stupid provisions of the Constitution you were speaking about earlier, Tshepo?

Tshepo: Ah, I see you don't forget easily. What I had in mind was the **right to life**. I was asking myself why the Constitution would wish to state such an obvious thing. If I am alive, why do I need to be told that I have the right to live? Come on, Nomsa, nobody can really doubt my right to life. That is why, after all, you would get arrested if you killed me. Was it necessary for the Constitution to tell us such an obvious thing?

Nomsa: Unfortunately, Tshepo, lawyers don't believe that there are obvious things. So they try to ensure that everything is provided for specifically, so that there is as little scope for disagreement as possible - what I find very interesting is that no matter how hard they try, there is always disagreement. So, even their very clear and specific words leave very little room for obviousness. And if I know you very well, Tshepo, you will not be surprised by this, for you will find that this confirms your view that lawyers are creating a job for themselves by arguing even obvious matters. You will

argue that they don't like obvious things exactly because these may reduce their usefulness.

Tshepo: Well, what would you say? Isn't that crystal clear, Nomsa?

Nomsa: Ja, well, I really don't know. But maybe we should not dwell on that. Let us try and return to the question which you raised. I think that what you are saying has a ring of truth. Our right to life is already protected by the common law ...

Vusi: And what's that ... what do you mean by the common law?

Nomsa: Mh ..., I guess I'm beginning to sound just like your lawyer friends: I'm sorry if I do. Can you remember our little discussion earlier about the limitation of rights? We mentioned there that there are countries which do not have written constitutions. England is an example. Even though England does not have a written constitution, they have rather clear constitutional rules - for example the Queen will not interfere with the functioning of parliament; parliament will not interfere with the functioning of the courts; the rights of English citizens are protected; etc.,etc. These clear constitutional rules have been developed from custom and practice over a very long time. The constitution of England is not embodied in an Act of Parliament. But the English respect these rights and limitations just as if they were written in an Act of Parliament. One can almost say that they have a common law constitution.

The same thing is true about my right to life in the manner that you were speaking about just now. There is no Act of Parliament in South Africa which says that it is wrong to kill another human being - at least this was the case until the new constitution was passed in 1993. There is also no Act of Parliament which says that you should not steal or commit rape. But people who did these things were punished all along. It was established by custom and by practice over many, many years that it is wrong to do these things. That is what I meant just now when I spoke about the common law - I mean, when I said that your right to life is already protected by the common law. Can we proceed from that point, Vusi?

Vusi: Yes, certainly, Nomsa.

Nomsa: Well, fine then. When the Constitution says that "Every person shall have the **right to life**" it seems to me that we need to ask whom the Constitution is talking to. And it seems to me that, in asking that question, we need to look at the law as it was before - in other words, the law we were speaking about just now. As we have said, people who killed others were arrested for that. It seems to me that the law, as it existed before our new Constitution, was speaking to ordinary citizens. It was saying to citizens that they should not kill one another. Don't you agree, Tshepo?

Tshepo: Of course I agree. But what is the point? Why don't you just come to the point quickly?

Nomsa: Patience, brother. We'll need tons of patience if we are to make sense of these things. As I see it, it was rather easy for state organs - for example the police - to escape punishment if they killed a person in the past. One only has to think of all the people who died in the hands of the police. While we cannot say that all of them were killed by the police, two things are clear. Firstly, the police might agree that they did something which resulted in the

death of a prisoner. I don't know if you will remember the case of Mdluli. The police admitted that they did something which resulted in Mdluli's death. They said that after they had confronted him with evidence of all the things he had been involved in, Mdluli charged at them like an injured bull. They said that in the process of subduing him, Mdluli's head got bumped a number of times and sustained injuries, which resulted in his death. The case of Biko was similarly explained by the police. So, in respect of some prisoners, the police admitted that they had done something which resulted in the death of the prisoner. But they gave an explanation of why it was necessary for them to do that. Often their explanation was not convincing, but somehow they almost always escaped punishment.

Secondly, though it is by no means clear that all the people who died in police cells were killed by the police, it is clear that the police did not do everything possible to prevent their death. Think of it this way, Tshepo. If a person slips and falls, it comes naturally that you would try and balance yourself on your hands. Unless you have your hands firmly tucked away in your pockets, it is very unlikely that you will fall on the back of your head or even on your face. I have personally fallen more times than I can remember, but I never came close to cracking my skull in all the falls I have taken. And I think it would be very silly for a detainee to try and take a shower with his clothes on and, to crown it, with his hands in his pockets. If, now, you consider the number of detainees who slipped on soap in the shower and cracked their skulls, then you begin to wonder why it was so difficult for the police to take steps to ensure that their captives did not slip so violently in the shower. You begin to wonder why it was so difficult for the police to ensure that their captives did not fall out of 11th floor windows. So, the point I'm making is that even where we could not say for sure that the police killed people, it seems clear that they did not do enough to prevent their death.

The common law which protected our right to life was not very helpful in these sort of circumstances. Therefore I think that the Constitution is an improvement on the common law in so far as our right to life is concerned. If anyone dies in police cells today, the police will have a hell of a lot of explaining to do. So we may say, Tshepo, that the Constitution, when it says everyone shall have the right to life, is not only speaking to the citizens: it is also speaking to the State. It is speaking particularly to the State ...

Vusi: Are you saying, Nomsa, that people in South Africa will continue to be detained as they were in the past?

Nomsa: Well, let us talk about that a little later. I would like to make another point on the right to life before we drift to other issues. The right to life also suggests, Tshepo, that the courts of South Africa can no longer sentence people to death.

Tshepo: What do you mean? Are you saying that irrespective of what criminals do, they are no longer going to be sentenced to death?

Nomsa: Yes. There was a case before the Constitutional Court recently - **State versus Makwanyane and Mchunu**. In that case the Constitutional Court ruled that the Constitution does not allow the sentencing of people to death.

And now, Tshepo, I'd like us to go back to an earlier discussion we had - the one about the vertical application of the Constitution. Earlier you were arguing that the State poses no threat to you, and that, therefore, you did not really need to be protected from it. We agreed then that we might return to that question once we had dealt with other rights which the Constitution grants us. How do you feel about the right to life as we have discussed it? Do you feel that we do not need protection against the State in respect of that right?

Tshepo: I'm not too sure about that. What I know, however, is that we need a lot of protection against criminals right now.

Nomsa: I'd like for us to discuss that in some detail, Tshepo, but I'm not sure that we'll agree. I think that we should possibly try another argument. Vusi seemed a little concerned just now about the possibility that people might still get detained in South Africa. Would you not agree that we need to be protected from the State in so far as that is concerned?

Tshepo: Most certainly.

Nomsa: Well, that's great. But let us talk about detention. You asked earlier, Vusi, if people would still get detained in South Africa, like they were before. Do you remember that little discussion of ours about how our rights sometimes clash?

Vusi: Of course I do. But what has that to do with detention?

Nomsa: Well, I referred you then to some parts of the Constitution which deal with people's houses. We said that if you invade my house you are violating my right to security. Perhaps now we can quote the first part of that portion of the Constitution more fully. It says that "every person shall have the right to freedom and security of the person, which includes the **right ... not to be detained without trial**...." It would seem, therefore, that it will still be possible for people to get detained. And then the Constitution also speaks about the rights of detainees. However it will no longer be possible to detain them for long periods without making them appear in court.

Tshepo: Ah, but what difference does that make?

Nomsa: It makes quite a bit of difference, Tshepo. In the past the police could hold suspects under the security laws indefinitely, without bringing them to the courts. It is now no longer possible to hold a detainee for longer than 48 hours without bringing him or her before the courts. Access to the courts is

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very important. When the police were able to hold detainees for long periods before releasing them or bringing them before the courts, it was possible for detainees to get hurt, and then heal before they could be seen in public. When the detainees subsequently told the courts that they had been ill-treated in detention, it was very difficult for them to prove this, for all scars which they might have had were already healed by the time they appeared in court. And because the police were the only people who saw a detainee, no one could give evidence that he had indeed been ill-treated. The police were always inclined to support one another. The courts tended to believe their version, because the story of the detainee was unsupported.

So, now, the knowledge that a detainee will appear in court within 48 hours will serve as a strong deterrent for any policeman who wishes to do his work a little bit too enthusiastically.

Tshepo: What about other detainees, Nomsa, would they be able to give evidence if a policeman nevertheless went beyond the law in his treatment of a detainee? Oh, maybe I should ask first if detainees will still be kept in solitary confinement.

Nomsa: Yes, I think we should look at the last question first. I really don't think that the police will be able to keep detainees in solitary confinement these days. The Constitution says that no person shall be subjected to cruel, inhuman or degrading treatment. I think that holding a detainee or prisoner in solitary confinement would amount to cruel treatment. Therefore, Tshepo, I doubt that the police would do that these days. So I agree with you that other prisoners or detainees might be able to give evidence if ill-treatment happens in police cells these days.

When everything is considered, however, the detainee's best protection is the fact that the Constitution grants him the right to consult with a lawyer of his choice. The Constitution says that every detainee must be informed immediately when he is arrested that he has the right to consult with a lawyer of his choice. In small places an isolated police station might still be able to keep a detainee alone in circumstances which are legal - for example he might be the only prisoner. The detainee would in such circumstances not be protected by the presence of other prisoners. But the knowledge that he must appear in court, coupled with the detainee's right to consult a lawyer, would serve as a strong protection.

Vusi: But what would happen if the police did not bring the detainee before the court, and they kept him or her for longer than 48 hours?

Nomsa: Well, as we've already pointed out, every detainee has the right to consult a lawyer. In addition, the detainee has the right to challenge his further detention in Court, Vusi. But I agree that this protection may not always be useful in practice. If you do not have money to pay a lawyer, for example, the fact that the Constitution says you are entitled to one will not help you.

If your captor does not bring you to court, the fact that the Constitution says you can ask the court to free you, will not help you.

It is very important, Vusi, that people should know their rights. The law says that the police can keep you for a maximum of 48 hours. Thereafter they must either charge you or they must release you. When they arrest you, therefore, you have to check that they do not keep you for longer than the law says. If you notice that the time allowed by the law has passed, you must demand that they either charge you or release you.

Tshepo: You make it sound very easy, Nomsa. One must assume that the police know the law. Therefore when they keep you beyond the period allowed by the law, they do that deliberately. Why do you think that they will charge or release you when you demand that?

Nomsa: That is true. And that is why it is important for us to know our rights. We must not wait until we are arrested before we take the trouble to learn about our rights. A prisoner would still be in a rather weak position even in the new South Africa if he had no relatives or friends. If our friends and our relatives know our rights, they can act as a very strong buffer when we are arrested. If I am a prisoner, and I demand that I should be charged or released, it is in practice possible that my demand might be ignored. If my father comes and makes the same demand, however, it is not possible to ignore him. If my girlfriend comes and makes the same demand, it is not possible to ignore her. So, then, those of us who are not arrested can act as a strong buffer to protect the rights of our friends and relatives who are in jail.

But you also asked what would happen if the police did keep you for a longer period than the law allows. The police might have a very good reason for arresting you. From the moment, however, that the period allowed by the law has passed, the arrest is no longer lawful. Therefore when you are eventually freed, you can sue them for unlawful detention.

Tshepo: I want to understand this very clearly, Nomsa. If the police arrest me on a Friday afternoon, you say I must begin to count the hours. Let us say that they arrest me at five o'clock in the afternoon. The 48 hours we speak of would expire at five o'clock on Sunday afternoon. They can't take me to court at that time. They don't have a choice, therefore, and they must release me. Is that what you are saying?

Nomsa: That would be very good, Tshepo, wouldn't it? If you have committed an offence, all you would need to do is evade the police until Friday evening. You might even hand yourself to them on Friday evening, and you'd be free on Sunday evening. You could keep on repeating the process, and in this way you would never be brought to justice. Unfortunately it does not work that way. If the 48 hours expires before the next session of the courts, you will be kept in detention until then.

We have talked so much, I nearly forgot that you were telling me about the stupid provisions of the Constitution. Apart from the provisions of the Constitution which speak about the right to life, are there others which you have found stupid?

Tshepo: Ja, I jolly well nearly forgot myself. My conscience, Nomsa, is something over which nobody has control. I don't understand what the Constitution hopes to achieve when it says I have **freedom of conscience**: I mean, everybody knows that. The same is true about belief, thought, opinion and religion. Nobody has ever tampered with those things. So, why should the Constitution guarantee us rights which are not under any threat?

Nomsa: Mh ..., I'm not too sure about that, Tshepo. Many years ago there was a ruler. His name, as I recall, was Dionysius. A citizen - I think his name was Marsyas - had a dream in which he cut Dionysius' throat. This dream worried Marsyas, and he shared it with fellow citizens in the hope to find an explanation for it. As it turned out, Dionysius came to know about the dream, and had Marsyas brought before him. He - Dionysius - demanded an explanation: **how did the dream come to Marsyas' mind at night, if the thought did not occupy his mind during the day?** Because Marsyas could not prove that he never thought of killing Dionysius, he was put to death.

People then started to think very seriously about what had happened. They accepted that it would be impossible to prove that the citizen had never thought of killing the Emperor. But they asked: **if the citizen had indeed thought of killing the Emperor, what would be wrong with that?** From those days onwards they campaigned for the right to freedom of

thought. So, Tshepo, it is important that we should have freedom of thought ...

Vusi: Give us a break, Nomsa. Do you really think that such a thing could happen in South Africa today?

Nomsa: I don't know, Vusi. In order to make sure it doesn't, however, I think that the Constitution is wise to guarantee freedom of thought. But there is another angle to this whole debate. The things that you are criticizing, I think that they must be looked at in the light of other provisions of the Constitution. These other provisions seem to me related to the criticism you are making. As a matter of interest, I suggest that whenever we try to understand the Constitution or any document for that matter, we should try and look at it as a whole. It is possible, you see, that one part of the Constitution may shed light on another part.

Tshepo: Fine. Please tell us what these other provisions state.

Nomsa: They guarantee us political rights, Tshepo. They say we all have the right to take part in the activities of a political party of our choice; to campaign for a political cause; and to make political choices freely.

Tshepo: And what has that to do with freedom of thought, conscience or religion?

Nomsa: Well, let's look at that. But first, tell me what you think of the provisions of the Constitution that I have just referred to.

Tshepo: They seem to be very good. When we consider what is happening in KwaZulu-Natal, it seems to me that the Constitution has a valid point in guaranteeing us the freedom to exercise political choices.

Vusi: I think that what happened between the UDF and AZAPO in the period 1985 to 1988 is also a good example of why we would need a constitution which guarantees people's right to exercise free political choices.

Nomsa: I agree with you. Just in passing: if we succeed in creating an environment where we all respect the right of others to make free political choices, do you realise that our great grandchildren will read our Constitution and maybe wonder what possessed our generation to include such redundant clauses in it?

Tshepo: Yes, there is such a possibility.

Nomsa: But the point I really wished to make is that freedom of thought often manifests itself in concrete things. If we did not have freedom of thought, but we had the political rights mentioned in the Constitution, that would be meaningless. We would then have the freedom to choose what political parties we wish to belong to, but there would really be no difference between these parties, unless we had freedom of thought.

Tshepo: You are losing me, Nomsa. What exactly do you mean?

Nomsa: It's not difficult, Tshepo. All you have to do is think about our situation before 1990. Provided that political parties did not hold certain ideas, or provided they were not ready to do something about their ideas, they were allowed to exist. If political parties believed in certain things - for example the liberation of black people or communism - they were not allowed to exist. So, the only political parties which existed were those the government of the day approved of. In other words, then, people were not allowed to think beyond the frame approved by the government: if they did, they couldn't do anything about it unless they were ready to risk arrest and harassment. Therefore, as I see it, the two go together. It accordingly seems to me, then, that we need the protection of free thought even in today's South Africa, Vusi.

Tshepo: Nomsa, I have benefited a lot from this discussion. The rights that we have spoken about today, is that a complete list of our rights?

Nomsa: No, Tshepo. There are other rights the Constitution speaks about - for example access to information; administrative justice; the rights of workers; the rights of children; the right to a healthy environment; the right to property; the right to use any language of one's choice; and the right to education. Even the rights that we have discussed, Tshepo, more could be said about them.

Vusi: Would you mind, Nomsa, telling us something about the **rights of children**?

Nomsa: The Constitution says, Vusi, that a child has a **right to a name and nationality**. It also says that every child is entitled to parental care, security, basic nutrition, health and social services. It forbids the exposure of children to **exploitative labour practices** or any work which might **harm the child's education**.

Tshepo: When you say, Nomsa, that we have a **right to a healthy environment**, does that mean I could force ESKOM, for instance, to stop polluting the atmosphere? Can I take them to court for that?

Nomsa: There is a problem about that. The right to a healthy environment is a third-generation right. It is not clear yet that you could enforce it. As I indicated earlier, the current dominant view is that only first-generation rights are enforceable.

Tshepo: And what is entailed in the **right to information**?

Vusi: Yes, I'm also interested in that. I'd like to know, for instance, if I could force my boss to reveal information which I need about the company during wage negotiations.

Nomsa: Mh ... you guys are raising a lot of difficult questions just as I thought we were wrapping up. **Access to information** is provided for in the Constitution. The provision does not give you a blanket right - it says that

you are entitled to information which is held by the State. So, in your case, Vusi, you cannot use this right against your boss - unless, of course, you are employed by the State - to demand information. But then you might be able to obtain the information you require by using the **Labour Relations Act** and other agreements reached at NEDLAC. And then, to return to you, Tshepo, the information which you need must **be necessary in order to enforce or protect your rights**. So, you cannot just demand any information which you feel you need.

Vusi: Nomsa, I'm slightly confused here. I thought that you said the Constitution speaks about the rights of workers. Now you say I should use the **Labour Relations Act**. I do not understand that. Does the Constitution speak about the rights of workers or does it not?

Nomsa: It does, Vusi. However it does not confer any right which did not already exist under the **LRA**. All it really does is to give constitutional confirmation

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to those rights. And the rights in question are: fair labour practice; forming and joining trade unions and employers' organisations; collective bargaining; and strike.

Tshepo: Nomsa, what about **administrative justice**? What is entailed in that right?

Nomsa: In the light of our history, that is a very important right, Tshepo. You might remember that in terms of a number of laws Cabinet Ministers were able, in the past, to take decisions about our lives without giving reasons. An example which comes all too readily to mind was the ability of the Minister of Justice, in the past, to ban and house arrest people without giving reasons. Another example would be the refusal to grant a person a passport. The Minister of Home Affairs did this very often in the past without giving a reason for his decision. There are countless examples of this type of practice in our not too distant past. The Constitution provides that this kind of practice will no longer be possible. Not only must the government official who takes such a decision provide reasons for taking it: the reasons must actually justify the decision! If, then, you are not happy with the decision given, you will be able to take the matter to court. In the past the court was prevented from inquiring into the Minister's reasoning or **bona fides**. Now, however, the Minister or whoever else takes the decision, will have to justify it fully. If the court finds that the reason is not enough to found the decision, it can overrule th government official, and give effect to the citizen's rights.

Vusi: What about the **right to education**, Nomsa? I thought that we would be able to take our children to school and university for free by now.

Nomsa: That would be great, wouldn't it, Vusi? Unfortunately the Constitution speaks of **basic** education. University and/or technikon education is not considered to be basic. In fact it is only the first nine years of the child's education which is considered to be basic. But the Constitution also provides for the removal of discrimination on the basis of race in admitting children to learning institutions. It also allows that, where possible, the child should be taught in a language of its choice.

Tshepo: It would seem that the only right that we have not covered among those you mentioned is the **right to property**. I suspect we have tired you quite a bit. But I think that discussing just one more right cannot harm you, given the long way we have already come.

Vusi: I agree with Tshepo, Nomsa. Would you mind?

Nomsa: You guys must make me a promise ...

Vusi: Anything you say.

Tshepo: You just name it.

Nomsa: Well, I'm pleased to see that we have developed quite a bit of trust in the course of this conversation. Previously both of you would have wanted to

know what I want from you before making such unequivocal commitment. Thank you for your trust. You must promise me that you will also not tire too easily when others ask you to discuss these matters with them. I must confess that I did not go through all this with you out of generosity: at every stage it has been my secret hope that this exercise will have a multiplier effect. It has been my hope that you, too, will undertake to explain to others the things we have been discussing today, so that together we can work towards promoting a culture of human rights - together with the obligations which go with it. Are you able to promise me that?

Both: Consider it done.

Nomsa: Wonderful. The constitutional protection of property was really the function of a fear that those who held property before the dawn of the new dispensation might be deprived of it. The Constitution, therefore, seeks to ensure that no one will be deprived of any property he or she holds without due process of law. In particular, the Constitution intends to make sure that, in the event that anyone is deprived of his or her property, he or she is compensated. Thank you guys, I wish all three of us success in the crusade we have just committed ourselves to.

GLOSSARY

Access to courts - everyone has the right to have any dispute that can be resolved by the application of the law, settled by a court of law or, where appropriate, another independent and impartial forum.

Access to information - the right of a person to be provided with all information held by the state or another person and which is required for the exercise or protection of any of his or her rights.

Accountability - involves the idea that those who exercise power, whether in government or as elected representatives or as appointed officials, must be able to show that they have exercised their powers and discharged their duties properly.

Affirmative action - a deliberate policy of giving preferential treatment to some groups in society on the grounds that such groups have been disadvantaged either by government policies or as a result of popular prejudice.

Children - a child means a person under the age of 18 years. Children have the right to a name and nationality from birth. Both parents or guardians are responsible for the upbringing and development of their children. When children are removed from the parents, the government has to provide appropriate alternative care. A child has the right to nutrition, shelter, basic health care services and social services.

Parents, guardians and others who look after children may not neglect them or treat them violently or cruelly. Children may not be used to make money by doing work that is dangerous, harmful or interferes with their education.The type of work that a child does, must be appropriate for that child's age.

The government must protect a child from all forms of sexual exploitation and abuse.

Wherever possible, children in conflict with the law should not be placed in a prison or a reformatory. Every child offender has the right to legal representation. A child may be detained only for the shortest appropriate period of time and has the right to be kept separately from adults in detention.

Citizen - a member of a state who is entitled to such civil and political rights as exist in that state, and who has obligations in respect of those rights. In terms of the SA Constitution, no citizen may be deprived of citizenship.

Constitution - a fundamental statement of the laws governing citizens' political rights, and the political institutions, their functions and their relationships in a particular political community.

Constitutional Court - a court established in terms of the constitution. The court consists of the president and ten other judges. The court has jurisdiction over all matters relating to interpreting, protecting and enforcing the provisions of the constitution including the question

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whether a matter falls within its jurisdiction. A decision of the Constitutional Court is binding on all persons and all legislative, executive and judicial organs of state.

Cultural, religious and linguistic communities - persons belonging to a cultural, religious or linguistic community may not be denied the right to form, join and maintain their associations. Such persons should not be denied any right enjoyed by other citizens as a result of exercising their cultural and religious rights.

Education - everyone has the right to basic education, including adult basic education. Citizens also have the right to further education and the state must take reasonable measures to make education progressively available and accessible. People may receive education in the language of their choice in public schools where that education is reasonably applicable. The right to establish and maintain, at one's own expense, independent educational institutions is also guaranteed, provided that such institutions do not discriminate on the basis of race; are registered with the state and maintain standards that are in line with comparable public educational institutions.

Environmental rights - these rights recognize that people have the right to live in an environment that is clean and free from pollution and protected from destruction

Equality - everyone is equal before the law and has the right to equal protection and benefit of the law. Because of our long history of discrimination, our constitution also allows the state to make laws and to take other measures that will protect and advance those who were unfairly disadvantaged in the past.

Freedom of assembly - everyone has the right to meet peacefully and unarmed without interference from others. Such gatherings may take the form of meetings, political rallies, marches and mass demonstrations. Like other rights, freedom of assembly is not absolute in that the government can make reasonable rules regarding the time, manner and place of gatherings.

Freedom of association - the right to have others, with whom you have a common interest, associate with you to achieve a legitimate goal. It means that people should have the right to belong to organizations of their choice and the right not to be forced to belong to or support other organizations. However the law will not protect a group of criminals who wish to associate together.

Freedom of expression - this is the right of individuals to express their opinions freely. Freedom of expression is reflected in a free press and other media such as television and radio. However, certain kinds of speech such as propaganda for war and "hate speech", which includes spreading hatred and inciting people to violence, hostility and discrimination based on race, will not be protected.

Freedom of movement and residence - this is a right of individuals to move freely and reside anywhere within the country.

Every citizen has the right to a passport that enables him/her to enter and leave the country.

Freedom of trade, occupation and profession - every citizen has the right to choose their trade, occupation or profession freely.

Health care, food, water and social security - everyone has the right to have access to health care services, sufficient food and water; and social security.The government will provide appropriate social assistance to those people who are unable to support themselves. No one may be refused emergency medical treatment.

Housing - everyone has the right to have access to adequate housing and the state must take reasonable steps to achieve the realization of this right. No one may be evicted from their home, or have their home demolished without an order of court made after considering all the relevant circumstances.

Human dignity - every one has inherent dignity and the right to have their dignity respected and protected.

Human Rights Commission - a body provided for by the constitution to act as a watchdog to protect fundamental rights. The objects of the commission are to promote the observance of human rights, assess proposed legislation in the light of human rights norms, investigate alleged human rights violations and where appropriate assist the complainant.

Judiciary - a branch of government responsible for interpreting authoritatively common law and the laws made by the legislature in cases where disputes arise as to the meaning, validity, or alleged breach of such laws.

Language and culture - everyone has the right to use the language and to participate in the cultural life of their choice.

Life - every person has the right to life. The death penalty has been abolished.

Political rights - these rights allow citizens to form and participate in the activities of a political party,to stand for public office and to vote in secret in free and fair elections for any legislative body established in terms of the constitution.

Privacy - the right of individuals not to have their person or property searched, their possessions seized and the privacy of their communications violated except in accordance with the requirements of the law.

Property - no one may be deprived of property except in terms of a law of general application, and no law may permit arbitrary deprivation of property. A law can be passed that allows the state to expropriate private property when it is for a public purpose or in the public interest. In such a case, the courts will decide on the amount of compensation and when this will be paid. The court will have to balance the public interest and the interests of the property owner(s) affected.

Factors that would have to be taken into account include the current use of the property, the history and value of its acquisition, the market value and the extent of direct state investment, subsidy in the acquisition and beneficial capital improvement of the property and the purpose of the expropriation. Property that is being expropriated for land reform purposes will not be excluded from these provisions.

1913 is the cut off date for land claims for people or communities whose land was taken away from them through discriminatory laws and practice.

Public Protector - a high-ranking public official who is required to be independent and impartial. The Office of the Public Protector investigates allegations of maladministration, and abusive, discourteous and improper behaviour by public officials. It also investigates allegations of corruption and improper use of public funds.

Rights of arrested, detained and accused persons - anyone who is arrested for allegedly committing an offence has the right to remain silent and be informed in a language that he/she understands of such right and be warned of the consequences of making any statement. Such a person cannot be compelled to make any confession or admission that could be used in evidence against him/her.

The accused person has to be brought before a court of law and be charged as soon as reasonably possible, but not later than 48 hours after the arrest.If the 48 hours expires outside ordinary court hours or on a day that is not a court day, the accused has to be brought before court on the first court day after the expiry. The accused also has the right to apply for bail.

Every accused person has the right to a fair trial, which includes the right to legal representation, to be given sufficient time to prepare a defence, to be tried in a language he/she understands and, most important of all, to be presumed innocent until proven guilty.

Detained in and sentenced prisoners have the right to legal representation of their choice, and to communicate with and be visited by their next of kin, chosen religious counsellor and medical practitioner.

The Commission for Gender Equality - the purpose of the commission is to promote respect for gender equality and to protect, develop and attain gender equality through monitoring, investigating, researching and providing education on gender equality issues.

Transparency - the requirement that people should be able to see what is happening in the government of a country, and that they and the media should have access to information about what decisions are being made, by whom and why.

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